IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 18217 of 2004

Between:

Bikshapati Virayya, S/o Veeraiah,
R/o Dharmasagar Post and Mandal, Warangal District.

..... PETITIONER

AND

1 Union of India, rep. by General Manager, Central Railway.
2 The Assistant Divisional Railway Manager, Revising Authority,
Nagpur Division, Central Railway.
3 The Divisional Engineer, Appellate Authority, Nagpur Divisiobn, Central

Railway.
4 The Assistant Engineer, Disciplinary Authority,
Nagpur Division, Central Railway.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to O.A.No.334 of 2003 on the file of the Central Administrative Tribunal, Hyderabad and the departmental proceedings against the petitioner
in Proceedings/Letter No. CD/MBV/269, dt. 25-10-2000, Proceedings No.NGP/W/159/Appeal/MBV, dt. 30-3-2001, Proceedings No. NGP/W.159/10/Appeal/MBV/131, dt. 24-9-2002 and declare and quash the same as illegal, arbitrary and without jurisdiction and in violation of Article 14, 16, 311 (2) of the Constitution of India and in violation of principles of natural justice and

consequently direct the 1st respondent to reinstate the petitioner in service with all consequential benefits including continuity of service and back wages and further be pleased to pass such other further order or orders as deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner:MSHEMA JAISWAL

Counsel for the Respondents: MR.GOURI SHANKAR SANGHI

The Court at the admission stage made the following:

ORDER:

(Per the Hon'ble Sri Justice Goda Raghuram)

The petitioner is aggrieved by the order of the Central Administrative Tribunal, Hyderabad Bench dated 28.07.2004.

2. The petitioner was working as Gangman with the railways. He was charged by proceedings dated 24.09.1998 on two grounds i.e., 1) unauthorized absence from duty from 01.01.1997 to 18.09.1997 for a total period of 172 days without information to superior authorities and without furnishing any medical certificate and 2) for failing to follow medical rules.

3. After conduct of a departmental enquiry, by the order of the disciplinary authority dated 25.10.2000, the petitioner was imposed a penalty of removal from service with effect from the date of order. He preferred an appeal, dated 14.11.2000, which was rejected by the order of the appellate authority dated 30.03.2001. He preferred a revision, which was also rejected
on 24.09.2002. Thereafter, filed O.A. seeking appropriate reliefs. By the order impugned herein, the Tribunal dismissed the O.A. finding no infirmity in the departmental proceedings or in the quantum of penalty imposed.

4. Petitioner contends that he was not afforded adequate opportunity in the disciplinary enquiry and the appellate authority did not record adequate reasons for rejecting the appeal and that as a period of 172 days of unauthorized absence alleged against him was in broken spells and as he was admitted to duty by the respondent-authorities, after each spell of absence, the spell of absence earlier to the rejoining of duty ought not to have been considered as misconduct. As these aspects were not properly considered by the Tribunal, the order of the Tribunal calls for review in the writ petition, is the substance of the petitioner's case.

5. The extent of opportunity given, which was however not availed by the petitioner and his total non-cooperation in the departmental proceedings is chronicled in detail in the report of the enquiry officer, dated 24.09.2002. This report records that the petitioner refused to accept the charge memo, failed to submit any written submissions before the disciplinary authority, refused to accept a copy of the order appointing the enquiry officer when it was sought to be served on him in the presence of the witnesses and failed to attend the enquiry on various dates despite intimation regarding the dates of enquiry from time to time. It also records the failure of the defence assistant of the petitioner in attending the enquiry on various dates on which the enquiry proceedings were scheduled and also that either the petitioner or his defence assistant were absent on several dates on which the enquiry was scheduled. Eventually, after adjournment of the disciplinary enquiry from time to time on a number of occasions, the enquiry officer was constrained to hold an *exparte* enquiry on 19.06.2002. Earlier too, the enquiry officer fixed the enquiry on 18.01.2001 to proceed *exparte,* but thereafter at the request of the defence assistant to participate in the enquiry, the opportunity was again afforded which was however not availed of by the petitioner or on his behalf.

6. In the O.A., the petitioner himself admits to have been absent for 172 days, which however he attributes to ill health and claims to have submitted all the medical and sick certificates. The enquiry officer, in his proceedings, however recorded that the petitioner did not submit any certificates.

7. Another contention urged on behalf of the petitioner is that the 172 days absence from 01.01.1997 to 18.07.1997 was in broken spells and as he was permitted to attend duty after each spell of unauthorized absence, the earlier period of absence should be considered as having been condoned. This contention does not commend acceptance by this Court. The recidivist conduct of the petitioner in resorting to continual spells of unauthorized absence is inconsistent with the conduct required to a public servant. The petitioner as an employee of the railways does not have a right to proceed on leave. Leave is regular only when sanctioned or when the absence is determined to be justified for some medical or other such reason, on proof of legitimising circumstances for the absence having been submitted by the employee to establish that his absence without prior sanction of leave is justified. In the case on hand, the petitioner absented himself on a number of occasions for a total period of 172 days, as per his own admission, without due sanction of the period of absence. Such a conduct does constitute misconduct of sufficient gravity as to warrant the penalty of removal from service.

8. Insofar as the remaining complaint with regard to the cryptic nature of the appellate order is concerned, this aspect also does not commend acceptance by this Court. It is a settled principle that an order of the appellate authority, which merely affirms an order of punishment passed by the disciplinary authority, does not require detailed reasons to be recorded. The appellate order dated 30.03.2001 also records that the petitioner was called for personal hearing on 08.03.2001, but he did not turn up. In these circumstances, the petitioner has no legitimate expectation for an elaborate order from the appellate authority.

8. On the analysis of the above, we find no infirmity in
the order of the Tribunal rejecting the O.A. The writ petition is devoid of merits and is accordingly dismissed at the admission stage.

J.CHELAMESWAR, J

GODA RAGHURAM, J

Dated 05th November, 2004.

YCR

To

1 The General Manager, Union of India, Central Railway.
2 The Assistant Divisional Railway Manager, Revising Authority, Nagpur Division, Central Railway.
3 The Divisional Engineer, Appellate Authority, Nagpur Divisiobn,

Central Railway.
4 The Assistant Engineer, Disciplinary Authority, Nagpur Division,

Central Railway.

5. 2 C.D. copies.